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REPLY TO MIAMI OFFICE

October 30, 2023

APPLICATION GRANTED  
SO ORDERED

**VIA ECF**

The Honorable John G. Koeltl  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

  
John G. Koeltl, U.S.D.J.

10/31/23

Re: *Emergency Physician Services of New York, et al., v. UnitedHealth Group, Inc. et al., No. 1:20-cv-09183-JGK-SN: Motion to Seal Portions of Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment, Plaintiffs' Response to Defendants' Rule 56.1 Statement, Plaintiffs' Counter Statement of Material Facts, and Certain Exhibits in support of Plaintiffs' Opposition.*

Dear Judge Koeltl:

In accordance with Local Rule 7.1(d), Rule VI of Your Honor's Individual Practices in Civil Cases, the S.D.N.Y.'s Sealed Records Filing Instructions, and the Confidentiality Stipulation and Protective Order in effect in this action (the "Protective Order") (Dkt. No. 110), Plaintiffs request that the Court grant them leave to file under seal an unredacted version of their Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment ("Opposition"), an unredacted version of their Response to Defendants' Rule 56.1 Statement ("Response"), an unredacted version of their Counter Statement of Facts ("Counter Statement"), and Exhibits 1-10, 12-16, 26-29, 35-45, and 48-55 in support of the Opposition, filed with the Declaration of Emily L. Pincow.

Exhibits 1-10 and 12-15 are transcripts of deposition testimony taken in this case, portions of which include sensitive information that either or both of Plaintiffs and Defendants have designated "Confidential" or "Attorneys' Eyes Only" (AEO) under the Protective Order. Plaintiffs' Opposition also contains quotations and information from Exhibits 4 and 6. Plaintiffs' Response contains quotations and information from Exhibits 1-10 and 12-15. Plaintiffs' Counter Statement contains quotations and information from Exhibits 1-2, 4, and 9.

Exhibits 16, 26-29, 35-40, 42-44, and 48-55 are United documents marked either Confidential or AEO and therefore subject to sealing pursuant to the Protective Order. Plaintiffs' Opposition also contains quotations and information from Exhibits 28, 44, 49, and 54. Plaintiffs' Response contains quotations and information from Exhibits 16, 35-40 and 44. Plaintiffs' Counter Statement contains quotations and information from Exhibits 28, 43-44, and 48-55.

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Exhibit 41 is Plaintiffs' list of disputed claims, which is marked Confidential pursuant to the protective order and is therefore subject to sealing. Plaintiffs' Response also contains information from Exhibit 41.

Exhibit 45 is a sworn statement of Kelly O'Rourke for UnitedHealth Group (UHG) and was used as an exhibit during the deposition of UHG's corporate representative Kevin Ericson, portions of which remain Confidential pursuant to the Protective Order. Plaintiffs' Counter Statement also contains information from Exhibit 45.

The Opposition, Response, Counter Statement, and Exhibits 1-10, 12-16, 26-29, 35-45, and 48-55 identified above contain Confidential Information, as defined in the Protective Order. Accordingly, the unredacted Opposition, the unredacted Response, the unredacted Counter Statement, and Exhibits 1-10, 12-16, 26-29, 35-45, and 48-55 should be filed under seal. *See* Dkt. No. 411 (granting United's motion to seal deposition transcripts of Provider Plaintiffs' witnesses); *Haley v. Tchrs. Ins. & Annuity Ass'n of Am.*, No. 17-cv-00855 (JPO)(RWL), 2020 WL 3618573, at \*1 (S.D.N.Y. July 2, 2020) ("The sealing of documents may be justified to preserve 'higher values,' including the need to protect an entity from 'competitive injury.'"); *Tropical Sails Corp. v. Yext, Inc.*, No. 14-cv-7582, 2016 WL 1451548, at \*4 (S.D.N.Y. Apr. 12, 2016) (sealing sensitive business information).

Pursuant to the Protective Order, before filing a Confidential document publicly, the Parties are required to "file a motion with the Court for filing under seal, unless the producing Party otherwise agrees." *See* Protective Order ¶ 22. Therefore, Provider Plaintiffs hereby request that the Court grant their request to file under seal the unredacted Opposition, the unredacted Response, the unredacted Counter Statement, and Exhibits 1-10, 12-16, 26-29, 35-45, and 48-55.

Respectfully submitted,

/s/ Emily L. Pincow

Emily L. Pincow

cc: Counsel of Record (via ECF)